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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LINDA ANN GOMEZ,

Defendant and Appellant.

E068755

(Super.Ct.No. FSB17001489)

OPINION

APPEAL from the Superior Court of San Bernardino County. Richard V. Peel and Gregory S. Tavill, Judges. Affirmed as modified.

Paul Kleven, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Linda Ann Gomez pled guilty to assault by means likely to cause great bodily injury. (Pen. Code, § 245, subd. (a)(4).)¹ A trial court granted defendant probation for a period of three years, under specified conditions. Subsequently, a petition to revoke her probation was filed, alleging that she failed to report to the probation department after being released from jail. Defendant admitted the probation violation, and the court reinstated her on probation.

On appeal, defendant challenges a condition of her probation requiring her to submit to the search and seizure of her electronic devices. She contends that this condition is unconstitutionally overbroad and requests that it be stricken. We agree that the condition is unconstitutionally overbroad but conclude that it should be modified. In all other respects, we affirm the judgment.

PROCEDURAL BACKGROUND

Pursuant to a plea agreement, defendant pled guilty to assault by means likely to cause great bodily injury. (§ 245, subd. (a)(4).) In exchange, the court dismissed a count of assault with a deadly weapon. (§ 245, subd. (a)(1).) The parties stipulated to the police report as a factual basis for the plea. The police report reflects that defendant and her boyfriend got into an argument, and defendant got into her car and tried to hit him.

The court placed defendant on probation for three years under specified conditions, including that she submit to the search of seizure of her electronic devices.

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

ANALYSIS

The Probation Condition Requiring Defendant to Submit to the Search and Seizure of Her Electronic Devices is Unconstitutionally Overbroad

One of defendant's probation conditions requires her to "[s]ubmit to search and seizure . . . by a government entity of any electronic device that [she is] an authorized possessor of pursuant to PC 1546.1(c)(10)." Defendant argues that this condition (hereinafter, the electronics search condition) is unconstitutionally overbroad. We agree.

At the outset, we note the People's argument that defendant did not object to the electronics search condition below and thus forfeited her claim on appeal. Defendant's challenge to her probation condition as facially overbroad "presents an asserted error that is a pure question of law, easily remediable on appeal by modification of the condition." (*In re Sheena K.* (2007) 40 Cal.4th 875, 888 (*Sheena K.*)). Thus, her claim was not forfeited. (*Id.* at p. 889.)

"A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.)

"The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) We review constitutional challenges to probation conditions de novo. (*People v. Appleton* (2016) 245 Cal.App.4th 717, 723 (*Appleton*)).

B. *The Electronics Search Condition Must Be Modified*

When a probation condition imposes limitations on a person's constitutional rights, it “ ‘must closely tailor those limitations to the purpose of the condition’ ”—that is, the probationer's reformation and rehabilitation—“ ‘to avoid being invalidated as unconstitutionally overbroad.’ ” (*People v. Olguin* (2008) 45 Cal.4th 375, 384.) We agree the electronics search condition is overbroad in its authorization of searches of electronic devices because it is not narrowly tailored to its purpose of furthering defendant's rehabilitation. (*In re P.O.* (2016) 246 Cal.App.4th 288, 298.) In fact, the electronics search condition is not tailored at all. Rather, the condition requires defendant to “[s]ubmit to search and seizure by a government entity of any electronic device that [she is] an authorized possessor of pursuant to PC 1546.1(c)(10).” This condition “permits review of all sorts of private information that is highly unlikely to shed any light on whether [defendant] is complying with the other conditions of [her] probation.” (*Ibid.*, citing *Appleton, supra*, 245 Cal.App.4th at p. 725 [“[A] search of defendant's mobile electronic devices could potentially expose a large volume of documents or data, much of which may have nothing to do with illegal activity. These could include, for example, medical records, financial records, personal diaries, and intimate correspondence with family and friends.”].) Defendant's privacy interests may be infringed, but only to the extent the information searched is reasonably likely to yield evidence of criminal activity and noncompliance with her probation conditions. Thus, the electronics search condition must be modified accordingly.

The People argue that defendant “presented no evidence showing that a search of [her] electronics would be any more invasive than an unannounced, warrantless search of her residence, a condition to which she does not object.” However, we note that the probation condition defendant consented to in this regard requires her to “[p]ermit visits and searches of place of residence by agents of the Probation Department and/or law enforcement *for the purpose of ensuring compliance with the terms and conditions of probation.*” (Italics added.) The electronics search condition sweeps more broadly than this probation condition, since it contains no limitations.

We conclude the electronics search condition must be modified to limit authorization of searches of defendant’s electronic devices to communications or information reasonably likely to reveal whether she is engaging in criminal activity or otherwise not complying with her probation conditions.

DISPOSITION

The electronics search condition should be modified to read: Submit to search and seizure by a government entity of any electronic device that you are an authorized possessor of pursuant to Penal Code section 1546.1, subdivision (c)(10). The searches are limited to communications or information reasonably likely to reveal whether defendant is engaging in criminal activity or otherwise not complying with her probation conditions.

In all other respects, the judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

CODRINGTON
J.

FIELDS
J.